Calendar No. 200

102D CONGRESS *1st Session*	SENATE	REPORT 102-134

FEDERAL MARITIME COMMISSION AUTHORIZATION ACT OF 1991

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

H.R. 1006

AUGUST 1 (legislative day, JULY 8), 1991.—Ordered to be printed

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FEDERAL MARITIME COMMISSION AUTHORIZATION ACT OF 1991

AUGUST 1 (legislative day, JULY 8), 1991.—Ordered to be printed

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 1006]

The Committee on Commerce, Science, and Transportation to which was referred the bill (H.R. 1006) to authorize appropriations for fiscal year 1992 for the Federal Maritime Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended to pass.

PURPOSE OF THE LEGISLATION

This bill authorizes appropriations for the continuation of programs administered by the Federal Maritime Commission [FMC] for fiscal year [FY] 1992, amends the Shipping Act of 1984 (the 1984 Act) to require that tariffs in service contracts entered into by controlled carriers be subject to the "fair and reasonable" standards of the 1984 Act, and provides for certain Jones Act waivers.

BACKGROUND AND NEEDS

The bill, as reported, authorizes an appropriation for the FMC for FY 1992 of $17,974,000. This represents an increase of $2,080,000 over the amount appropriated for FY 1991 and is the same amount requested by the Administration and authorized in the House bill.

The FMC is an independent agency whose primary function is to regulate the practices of both international and domestic maritime trade.

The FMC is composed of five Commissioners confirmed by the Senate; Christopher L. Koch is its current Chairman.

The FMC's regulatory authority is outlined in the 1984 Act, the Shipping Act of 1916, and other related statutes. The FMC is in charge of reviewing filings and service contracts, but does not regulate international ocean transportation rates. It does approve freight rates for transportation between domestic ports and domestic offshore ports such as Hawaii and Puerto Rico.

In addition to those duties, the FMC investigates and takes enforcement action in instances where unjust discriminatory rates have been found, or other improper activities exist among shippers, carriers, and terminal operations. To that end, the bill includes a provision intended to prevent controlled carriers, that is, government-owned or government-controlled carriers, from using predatory, non-commercial price cutting to undercut unfairly commercial carriers.

The bill also authorizes the Coast Guard to grant coastwise trade and fishery privileges to nineteen vessels, waiving the documentation requirements of title 46, U.S. Code, and the Jones Act (section 27 of the Merchant Marine Act, 1920).

Legislative History

S. 1489 was introduced on July 16, 1991, by Senator Breaux and co-sponsored by Senators Lott and Johnston. The Merchant Marine Subcommittee held a hearing, on July 18, 1991, and considered H.R. 1006, the FMC authorization bill passed by the House on June 24, 1991, the Administration's request, and S. 1489. On July 30, 1991, in open executive session, the Committee without objection agreed to an amendment in the nature of a substitute to H.R. 1006, and ordered the bill, as amended, to be reported favorably.

Summary of Major Provisions

AUTHORIZATION

The bill as reported authorizes $17,974,000 for the FMC for FY 1992. This represents an increase of $2,080,000 over the FY 1991 appropriated amount and is the same amount requested by the Administration and passed by the House. This amount includes an increase of (1) $613,000 for salary and benefit costs to support Commission programs; (2) $30,000 for additional travel expenses; and (3) $1,437,000 for administrative expenses, which includes an increase of $850,000 for the computerized tariff filing program and $423,000 for nondiscretionary rent increases. The authorized amount includes funding for the current level of personnel in the Office of Inspector General.

COASTWISE TRADE AUTHORIZATION

The bill also temporarily waives the restrictions of the Jones Act and any other laws that restrict the operation of foreign-flag vessels in the coastwise trade of the United States for the vessel *Nordic Louisiana* (U.K. Official Number 306173). The vessel requires a waiver because it was built in Great Britain. The owner

intends to operate the vessel out of Louisiana and in the coastwise trade of the United States.

The *Nordic Louisiana* is a British-built molten sulphur tanker. The waiver will allow the vessel to engage temporarily in the coastwise trade until a replacement for the *Louisiana Brimstone* can be obtained. That vessel was recently damaged beyond economic repair off the coast of Mexico.

Because there are no other available vessels capable of carrying liquid sulphur which are qualified to operate in the domestic trade (as certified by the Maritime Administration) the transportation of liquid sulphur to the Florida fertilizer industry would be seriously disrupted without this waiver. The Department of Agriculture has stated that the issuance of a waiver for this vessel is in the interest of national defense.

The temporary waiver is based on several conditions. First, the replacement vessel must be constructed or rebuilt in the United States within 4 years of enactment, with a binding contract for the work in place within 9 months of the enactment. Also, the repair work necessary to make the *Nordic Louisiana* operational also must be performed in the United States. Finally, the waiver is conditioned on the requirement that, during the period of the waiver, the officers and the crew of the *Nordic Louisiana* must be U.S. citizens. The waiver shall expire 4 years from the date of enactment.

The sole purpose of this section is to permit the *Nordic Louisiana* to engage in the coastwise trade of the United States. International safety requirements and all other such applicable laws will not be affected by this waiver.

VESSEL WAIVERS

Subject to certain limited exceptions, the law known as the Jones Act, section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), together with the vessel documentation requirements (sections 12106 through 12108 of title 46, U.S. Code), provides that only those vessels built in the United States, continuously documented under the laws of the United States, and continuously owned by U.S. citizens may transport merchandise or passengers in the coastwise trade, or engage in the fisheries, of the United States.

Where the facts applicable to a particular vessel suggest that the U.S.-built or U.S.-owned requirements have not been satisfied, the Coast Guard may not issue a document granting coastwise trading or fishery privileges for that vessel unless the requirements of the Jones Act and the documentation requirements are waived statutorily.

The reported bill grants a legislative waiver to permit the following vessels to operate in the coastwise trade of the United States and permits the Secretary of Transportation [Secretary] to issue certificates of documentation for them:

(1) *Argosy* (U.S. Official Number 528616).
(2) *Cutty Sark* (U.S. Official Number 282523).
(3) *Jiggs* (U.S. Official Number 208787).
(4) *Lois T* (U.S. Official Number 668034).
(5) *Marica* (Maryland Registration MD6417P).
(6) *Phoenix* (U.S. Official Number 655712).

(7) *Pure Pleasure* (U.S. Official Number 968163).
(8) *Starlight VIII* (U.S. Official Number 910317).
(9) *Windward III* (U.S. Official Number 552289).
(10) *Logan T* (U.S. Official Number 953795).
(11) *Eric WC* (Hull Identification Number 64103).
(12) *Commando* (U.S. Official Number 955188).

In addition, the bill clarifies the terms of Jones Act waivers granted in legislation enacted last year for eight inflatable vessels to ensure that the carriage of passengers in foreign vessels between ports or places in the United States is allowed for these vessels. Although the equities favor granting waivers for these inflatable vessels, the Committee has been made aware of at least 6 American companies that are capable of manufacturing inflatable vessels with similar specifications.

The reported bill also waives section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), and permits the Secretary to issue a coastwise endorsement, notwithstanding section 12106 of title 46, U.S.C., for the vessel *MV Nushagak* (U.S. official number 618759). The vessel needs a waiver because it was built in Japan. The owner intends to operate the vessel in the waters of western Alaska. The Committee intends this waiver to allow the *Nushagak* to continue its current operations, to process fish, and to load and unload fish from those operations without restriction. The Committee does not intend that the waiver affect the current restriction on harvesting.

AMENDMENT TO 1984 ACT

The bill amends the 1984 Act to clarify that the provisions of the Shipping Act of 1978, more popularly known as the Controlled Carrier Act, cannot be undercut through the use of service contracts. Sections 3(8) and 9 of the 1984 Act include provisions of the Controlled Carrier Act. That Act was enacted to prevent controlled carriers, that is, government-owned or government-controlled carriers, from using predatory, non-commercial price-cutting to undercut unfairly commercial carriers. The 1984 Act requires controlled carriers to maintain rates or charges that are "just and reasonable." The FMC has been given the authority to disapprove controlled carrier rates that it finds not to be just and reasonable. Also, rates of controlled carriers generally cannot become effective until 30 days after they are filed.

These provisions, however, do have the potential of being undermined by the use of "service contracts" by controlled carriers operating in the U.S. waterborne foreign commerce. Service contracts are arrangements under which a shipper agrees to provide a minimum amount of cargo over a stated time period to a specific carrier or conference while the carrier or conference commits to a negotiated rate and guarantees specific services.

The problem stems from the fact that, when the 1984 Act was enacted, Congress simply carried forward and incorporated verbatim the provisions of the Controlled Carrier Act. "Service contracts" entered into by controlled carriers are not subject to these restrictions since the restrictions apply only to a controlled carrier's rates or charges in its "tariffs" filed with the FMC. Rates con-

tained in service contracts are not filed in a carrier's tariff and are not, therefore, subject to the restrictions of the 1984 Act.

The reported bill seeks to resolve this problem by amending the 1984 Act to make service contracts subject to the "just and reasonable" standard of the 1984 Act. Service contracts would be exempted from the 30-day requirement, as the long-term nature of service contracts creates a disincentive to their use as a short-term predatory device. The FMC supports the amendment, because it believes that it is not logical to empower the FMC to oversee and regulate the possible predatory practices of foreign-owned carriers if they file their rates in tariffs, but not if their rates are filed in service contracts.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 31, 1991.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1006, an act to authorize appropriations for fiscal year 1992 for the Federal Maritime Commission, and for other purposes. Enactment of H.R. 1006 would not affect direct spending or receipts. Therefore, play-as-you go procedures would not apply to the act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 1006.

2. Bill title: An act to authorize appropriations for fiscal year 1992 for the Federal Maritime Commission, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 30, 1991.

4. Bill purpose: H.R. 1006 would authorize the appropriation of $17.974 million to the Federal Maritime Commission (FMC) for fiscal year 1992. The authorization is identical to the President's request and is $2.08 million more than the fiscal year 1991 appropriation.

Other provisions, which would have no budgetary impact, would amend the Shipping Act of 1984 and grant waivers of the Merchant Marine Act for certain vessels.

5. Estimated Cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Authorization level	18.0				
Estimated outlays	15.8	1.5	0.7		

The costs of this act fall within budget function 400.

Basis of estimate: For purposes of this estimate, it is assumed that the full amounts authorized will be appropriated for fiscal year 1992. The authorization level is as stated in the act.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. The enactment of H.R. 1006 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the act.

7. Estimated cost to state and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On May 8, 1991, CBO prepared a cost estimate for H.R. 1006, as ordered reported by the House Committee on Merchant Marine and Fisheries on May 2, 1991. The two estimates are identical.

10. Estimate prepared by: Deborah S. Reis.

11. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The bill, as reported, authorizes appropriations for the continuation of programs within the FMC. The increase of $2,080,000 above last year's appropriation is for salary and benefit costs to support FMC programs. The number of persons covered by provisions of this legislation will not vary significantly from those currently subject to regulation by the FMC.

ECONOMIC IMPACT

Section 1 of this bill authorizes $17,974,000 for the FMC for FY 1992. There is not expected to be any inflationary impact on the Nation's economy from the enactment of this authorization.

PRIVACY

This legislation will not have an adverse impact on the personal privacy of the individuals affected unless properly subject to subpoena or discovery relating to the enforcement of unfair trade practices set forth in the bill.

PAPERWORK

This legislation reauthorizes existing programs within the FMC. Therefore, there should be no change in the paperwork requirements associated with these programs.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

This section states that the Act may be cited as the "Federal Maritime Commission Authorization Act of 1991."

SECTION 2—AUTHORIZATION LEVELS

This section authorizes a total appropriation of $17,974,000 for the FMC for FY 1992. This amount represents an increase of $2,080,000 over the amount appropriated for FY 1991.

SECTION 3—COASTWISE TRADE AUTHORIZATION

This section waives the restrictions of the Jones Act (46 App. U.S.C. 883) and any other laws that restrict the operation of foreign-flag vessels in the coastwise trade of the United States for the *Nordic Louisiana* (U.K. Official Number 306173). The *Nordic Louisiana* is a British-built molten sulphur tanker. The waiver will allow the vessel to engage temporarily in the coastwise trade until a replacement for the *Louisiana Brimstone* can be obtained.

The waiver is to be based on several conditions. First, the replacement vessel must be constructed or rebuilt in the United States within 4 years of enactment, with a binding contract for the work in place within 9 months of enactment. The repair work necessary to make the *Nordic Louisiana* operational also must be performed in the United States. Finally, during the period of the waiver the officers and the crew of the *Nordic Louisiana* must be U.S. citizens. The waiver will expire 4 years from the date of enactment.

The sole purpose of this section is to permit the *Nordic Louisiana* to engage in the coastwise trade of the United States. International safety requirements and all other applicable laws will not be affected by this waiver.

SECTION 4—WAIVERS FOR CERTAIN VESSELS

Section 4(a) provides waivers for the following vessels:

(1) *Argosy* (U.S. Official Number 528616) is a 60-foot motor yacht. It needs a waiver because the vessel was owned by a British-controlled Florida corporation. The owner intends to operate the vessel in Maryland.

(2) *Cutty Sark* (U.S. Official Number 282523) is a 40-foot ketch. It needs a waiver because the vessel was built in Hong Kong. The owner intends to operate the vessel in Alaskan waters.

(3) *Jiggs* (U.S. Official Number 208787) is a 64-foot tug boat. It needs a waiver because it was previously owned by a Canadian corporation. The owner intends to operate the vessel in the Great Lakes.

(4) *Lois T* (U.S. Official Number 668034) is a 29-foot sloop. It needs a waiver because it was built in Canada. The owner intends to operate the vessel in the Chesapeake Bay.

(5) *Marica* (Maryland Registration MD6417P) is a 32-foot cruiser. It needs a waiver because the owner is unable to secure a builder's permit proving that the vessel was built in the United States. The owner intends to operate the vessel in the Chesapeake Bay and lower Potomac River.

(6) *Phoenix* (U.S. Official Number 655712) is a 38-foot sailboat. It needs a waiver because it was built in Canada. The owner intends to use it for sailing charters.

(7) *Pure Pleasure* (U.S. Official Number 968163) is a 31-foot fishing boat. It needs a waiver because the owner cannot furnish a complete record proving continuous U.S. ownership.

(8) *Starlight VIII* (U.S. Official Number 910317) is a 42-foot yacht. It needs a waiver because the owners cannot secure proof regarding the original owner, thereby proving continuous U.S. ownership. The owner intends to operate the vessel in the Great Lakes.

(9) *Windward III* (U.S. Official Number 552289) is a 30-foot fishing boat. It needs a waiver because the vessel was built in Canada. The owner intends to use the vessel as a charter boat operating in the Wrightsville, North Carolina area.

(10) *Logan T* (U.S. Official Number 953795) is a 58-foot fishing vessel. It needs a waiver because the vessel was once under foreign ownership. The owner intends to use the boat as a fish tender vessel.

(11) *ERIC WC* (hull identification number 64103) is a 38-foot fishing vessel. It needs a waiver because the owner cannot furnish a complete record proving continuous ownership by U.S. citizens. The owner intends to use the boat for small fishing charters.

(12) *Commando* (U.S. Official Number 955188) is a 40-foot wooden fishing vessel. It needs a waiver because the owner cannot provide proof of continuous U.S. ownership of the vessel. The owner intends to use the vessel for small fishing charters.

Subsection (b) clarifies the terms of Jones Act waivers granted for eight inflatable vessels in legislation enacted last year to ensure that the carriage of passengers in foreign vessels between ports or places in the United States is allowed for these vessels.

Subsection (c) waives section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), and permits the Secretary to issue a coastwise endorsement, notwithstanding section 12106 of title 46, U.S.C., for the vessel MV *Nushagak* (U.S. official number 618759). The vessel needs a waiver because it was built in Japan. The owner intends to operate the vessel in the waters of western Alaska.

SECTION 5—CONTROLLED CARRIERS

This section amends the 1984 Act. Sections 3(8) and 9 of that Act include provisions of the Controlled Carrier Act. The Controlled Carrier Act was enacted to prevent controlled carriers, that is, government-owned or government-controlled carriers, from using predatory, non-commercial price-cutting to undercut unfairly commercial carriers.

When the 1984 Act was enacted, Congress simply carried forward and incorporated verbatim the provisions of the Controlled Carrier Act. The 1984 Act requires controlled carriers to maintain rates or charges that are "just and reasonable." The FMC has been given the authority to disapprove controlled carrier rates that it finds not to be just and reasonable. Also, rates of controlled carriers generally cannot become effective until 30 days after they are filed. However, "service contracts" entered into by controlled carriers are not subject to these restrictions since the restrictions apply only to a controlled carrier's rates or charges in its "tariffs" filed with the FMC. Rates contained in service contracts are not filed in a carrier's tariff and are not, therefore, subject to the restrictions in the 1984 Act.

This section seeks to resolve this problem by amending the 1984 Act to make service contracts entered into by controlled carriers subject to the "just and reasonable" standard of that Act. Service contracts would be exempted from the 30-day requirement, as the long-term nature of service contracts creates a disincentive to their use as a short-term predatory device.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Shipping Act of 1984

Section 9 of that Act

SEC. 9 CONTROLLED CARRIERS.

(a) Controlled Carrier Rates.—No controlled carrier subject to this section may maintain rates or charges in its tariffs *or service contracts* filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in those tariffs *or service contracts*. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this subsection, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(b) * * *

(c) Effective Date of Rates.—Notwithstanding section 8(d) of this Act *and except for service contracts*, the rates, charges, classifications, rules, or regulations of controlled carriers may not, with-

out special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission. Each controlled carrier shall, upon the request of the Commission, file, within 20 days of request (with respect to its existing or proposed rates, charges, classifications, rules, or regulations), a statement of justification that sufficiently details the controlled carrier's need and purpose of such rates, charges, classifications, rules, or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(d) through (f) * * *

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